



DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-902]

Organic Soybean Meal from India: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 20, 2021.

FOR FURTHER INFORMATION CONTACT: Lauren Caserta at (202) 482-4737, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 2021, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of organic soybean meal from India, filed in proper form on behalf of the Organic Soybean Processors of America and eight domestic processors of organic soybean meal.¹ On April 6, 2021, these companies filed an amendment to Volume I of the Petition and “a change of petitioner” status on behalf of the Organic Soybean Processors of America, stating that the petitioners now consisted of the Organic Soybean Processors of America and seven domestic processors (collectively, the petitioners).² The Petition was accompanied by the antidumping duty (AD) petition concerning organic soybean meal from India.³

¹ See Petitioners’ Letter, “Petition for the Imposition of Antidumping and Countervailing Duties: Organic Soybean Meal from India,” dated March 31, 2021 (the Petition).

² See Petitioners’ Letter, “Organic Soybean Meal from India: The Petitioners’ Amendment to Volume I Relating to General Issues and Change of Petitioner Status,” dated April 6, 2021 (General Issues Amendment).

³ *Id.*

On April 5 and 15, 2021, Commerce requested supplemental information pertaining to certain aspects of the Petition.⁴ The petitioners filed responses to these requests on April 7, 9, and 16, 2021.⁵

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of India (GOI) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of organic soybean meal in India, and that imports of such products are materially injuring, or threatening material injury to, the domestic industry producing organic soybean meal in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition was accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (E)-(G) of the Act.⁶ Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested CVD investigation.⁷

Period of Investigation

Because the Petition was filed on March 31, 2021, the period of investigation (POI) for this CVD investigation is January 1, 2020, through December 31, 2020, pursuant to 19 CFR 351.204(b)(2).

⁴ See Commerce's Letters, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Organic Soybean Meal from India: Supplemental Questions," (General Issues Supplemental) and "Petition for the Imposition of Countervailing Duties on Imports of Organic Soybean Meal from India: Supplemental Questions," both dated April 5, 2021; and Commerce's Letter, "Petition for the Imposition of Countervailing Duties on Imports of Organic Soybean Meal from India: Additional Supplemental Questions," dated April 15, 2021.

⁵ See Petitioners' Letters, "Organic Soybean Meal from India: Petitioners' Response to Supplemental General Questions," dated April 7, 2021 (General Issues Supplement), "Organic Soybean Meal from India: Petitioners' Response to Supplemental CVD Questions," dated April 9, 2021; and "Organic Soybean Meal from India: Petitioners' Response to Additional Supplemental CVD Questions," dated April 16, 2021.

⁶ See Petition at Volume I at 4.

⁷ See "Determination of Industry Support for the Petition" section, *infra*.

Scope of the Investigation

The product covered by this investigation is organic soybean meal from India. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on Scope of the Investigation

On April 5 and 9, 2021, Commerce requested further information and clarification from the petitioners regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁸ On April 7, 2021, the petitioners revised the scope.⁹ The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).¹⁰ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,¹¹ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 P.M. Eastern Time (ET) on May 10, 2021, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 20, 2021, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional

⁸ See General Issues Supplemental at 1-2; *see also* Memorandum, "Phone Call with Petitioners Counsel," dated April 9, 2021.

⁹ See General Issues Supplement at 2-5.

¹⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

¹¹ See 19 CFR 351.102(b)(21) (defining "factual information.")

information. All such comments must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹² An electronically filed document must be received successfully in its entirety by the time and date it is due. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.¹³

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOI of the receipt of the Petition and provided an opportunity for consultations with respect to the Petition.¹⁴ Representatives from the GOI notified Commerce that they were unable to schedule consultations prior to the deadline for initiation. Commerce has offered the GOI the opportunity to meet after initiation.¹⁵

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of

¹² See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

¹³ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁴ See Commerce's Letter, "Countervailing Duty Petition on Organic Soybean Meal from India: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated April 5, 2021.

¹⁵ See GOI's Letter, "Scheduling of Pre-Initiation Consultation for Countervailing Duty Petition on Organic Soybean Meal from India," dated April 15, 2021; see also, Memorandum, "Countervailing Duty Investigation of Organic Soybean Meal from India: Ex Parte Communication Regarding Petition Consultation Deadline," dated April 16, 2021.

the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹⁶ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁷

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

¹⁶ See section 771(10) of the Act.

¹⁷ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation.¹⁸ Based on our analysis of the information submitted on the record, we have determined that organic soybean meal, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁹

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the appendix to this notice. To establish industry support, the petitioners provided their own production of the domestic like product in 2020.²⁰ To estimate total production of the domestic like product for the entire U.S. industry, the petitioners relied on production data from a report prepared by Agromeris, LLC (Agromeris), a consulting firm that focuses on the food and agricultural industry.²¹ We relied on data provided by the petitioners for purposes of measuring industry support.²²

Our review of the data provided in the Petition, the General Issues Amendment, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate

¹⁸ See Petition at Volume I at 21-27 and Exhibits I-3 through I-5, I-7, I-10, I-14 through I-20, I-25 through I-27 and I-29.

¹⁹ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Checklist, “Countervailing Duty Investigation Initiation Checklist: Organic Soybean Meal from India,” dated concurrently with this notice and on file electronically via ACCESS (CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Organic Soybean Meal from India (Attachment II).

²⁰ See Petition at Volume I at 7-8 and Exhibits I-4 through I-6; see also “Organic Soybean Meal from India: The Petitioners’ Amendment to Volume I Relating to General Issues and Change of Petitioner Status,” dated April 6, 2021 (General Issues Amendment) at 5 and Exhibit I-6-S.

²¹ See Petition at Volume I at 7-8 and Exhibits I-3 through I-5; see also General Issues Amendment at 5.

²² See Petition at Volume I at 6-9 and Exhibits I-2 through I-6; see also General Issues Amendment at 4-6 and Exhibit I-6-S. For further discussion, see Attachment II of the CVD Initiation Checklist.

industry support (*e.g.*, polling).²³ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²⁴ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²⁵ Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.²⁶

Injury Test

Because India is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁷

The petitioners contend that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price

²³ See CVD Initiation Checklist at Attachment II; *see also* section 702(c)(4)(D) of the Act.

²⁴ See CVD Initiation Checklist at Attachment II.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Petition at Volume I at 30 and Exhibit I-30; *see also* General Issues Supplement at 6.

depression and suppression; lost sales and revenues; reduced levels of capacity utilization; declining sales and profitability; and mill curtailments and closures.²⁸ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁹

Initiation of CVD Investigation

Based upon the examination of the Petition and supplemental responses, we find that it meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of Organic soybean meal from India benefit from countervailable subsidies conferred by the GOI. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all 50 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* the Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioners named 19 companies in India as producers/exporters of organic soymeal.³⁰ In the event Commerce determines that the number of exporters or producers in any individual case is large such that Commerce cannot individually examine each company based upon its resources, where appropriate, Commerce typically selects mandatory respondents in that case based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the

²⁸ See Petition at Volume I at 2-3, 21, 27-42 and Exhibits I-3 through I-5, I-22, and I-28 through I-33; *see also* General Issues Amendment at 6; and General Issues Supplement at 6 and Exhibit I-22-S.

²⁹ See CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Organic Soybean Meal from India (Attachment III).

³⁰ See Petition at Volume I at I-24.

“Scope of the Investigations,” in the appendix. There are two HTSUS subheadings in the scope of this investigation, 1208.10.0010 and 2304.00.0000; subheading 2304.00.0000 covers imports of both organic and non-organic soybean meal.³¹ Therefore, we cannot rely on CBP entry data in selecting respondents. We intend to issue quantity and value (Q&V) questionnaires to each potential respondent for which the petitioners have provided a complete address.

Producers/exporters of organic soybean meal from India that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain the Q&V questionnaire from E&C’s website at <https://www.trade.gov/ec-adcvd-case-announcements>. Responses to the Q&V questionnaire must be submitted by the relevant Indian producers/exporters no later than 5:00 p.m. ET on May 5, 2021. All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOI via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

³¹ While HTSUS subheading 1208.10.0010 is specific to organic soybean meal, HTSUS subheading 2304.00.0000 (which includes soybean meal in the form of cake, chips, or flakes) is not. The Petition alleges significant quantities of organic soybean meal enter under both subheadings: “The petitioners recognize that the HTSUS provides for the organic-certified product in HTSUS subheading 1208.10.0010. However, a review of the relevant USDA FAF’s Global Cultural Trade System (GATS) data demonstrates that imports of OSBM enter U.S. ports of entry utilizing HTSUS heading 2304, which is typically used for conventional soybean meal.” *See* Petition at 19.

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that subject imports are materially injuring or threatening material injury to a U.S. industry.³² A negative ITC determination will result in the investigation being terminated.³³ Otherwise, this CVD investigation will proceed according to the statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce’s regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁴ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³⁵ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit

³² See section 703(a) of the Act.

³³ *Id.*

³⁴ See 19 CFR 351.301(b).

³⁵ See 19 CFR 351.301(b)(2).

established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; Commerce will grant untimely filed requests for the extension of time limits only in limited cases where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulation concerning extension of time limits prior to submitting extension requests or factual information in this investigation.³⁶

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁷ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁸ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.*, by filing the required letters of appearance).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 20, 2021.

³⁶ See 19 CFR 351.302; *see also, e.g., Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

³⁷ See section 782(b) of the Act.

³⁸ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule*, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

Christian Marsh,
Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise subject to the investigation is certified organic soybean meal. Certified organic soybean meal results from the mechanical pressing of certified organic soybeans into ground products known as soybean cake, soybean chips, or soybean flakes, with or without oil residues. Soybean cake is the product after the extraction of part of the oil from soybeans. Soybean chips and soybean flakes are produced by cracking, heating, and flaking soybeans and reducing the oil content of the conditioned product. “Certified organic soybean meal” is certified by the U.S. Department of Agriculture (USDA) National Organic Program (NOP) or equivalently certified to NOP standards or NOP-equivalent standards under an existing organic equivalency or recognition agreement.

Certified organic soybean meal subject to this investigation has a protein content of 34 percent or higher.

Organic soybean meal that is otherwise subject to this investigation is included when incorporated in admixtures, including but not limited to prepared animal feeds. Only the organic soybean meal component of such admixture is covered by the scope of this investigation.

The products covered by this investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 1208.10.0010 and 2304.00.0000. Certified organic soybean meal may also enter under HTSUS 2309.90.1005, 2309.90.1015, 2309.90.1010, 2309.90.1030, 2309.90.1032, 2309.90.1035, 2309.90.1045, 2309.90.1050, and 2308.00.9890.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

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